

In the Court of Appeals of the State of Alaska

Peter Nick, Jr.,

Appellant,

v.

State of Alaska,

Appellee.

Court of Appeals No. **A-13427**

Order

Date of Order: **November 30, 2021**

Trial Court Case No. **4BE-15-00234CI, 4AK-14-00021CR**

Attorney Marilyn J. Kamm represents Peter Nick Jr. in this appeal. Ms. Kamm recently filed Nick's reply brief, and in that brief she conceded — as the State had pointed out in its brief — that the issue before this Court is not whether there was sufficient evidence to support Nick's claims that his trial attorney was ineffective, but whether the trial court's fact finding was clearly erroneous. Because Ms. Kamm did not address the proper issue in her opening brief, she has addressed the issue in her reply brief. And because, as a general rule, a party may not raise new issues or arguments in a reply brief, Ms. Kamm asks this Court to accept her reply as a supplemental brief, and to allow the State the opportunity to file a sur-reply.

The State objects to Ms. Kamm's request to allow the Appellant to file a supplemental brief. The State notes that Ms. Kamm, in addition to addressing whether the trial court's fact finding was clearly erroneous, has also raised new issues. The State asks that if the Court accepts the supplement brief for filing, then the State be given an adequate opportunity to file its supplemental brief addressing those new issues.

Accordingly, **IT IS ORDERED:**

1. In the interests of justice, the request that Ms. Kamm be allowed to file a supplemental brief is **GRANTED**. The brief is accepted on the condition that prior to

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printing, the cover page be amended to state that the brief is a supplemental brief.

2. The State may file a supplemental brief. The State's supplement brief, or a notice that no brief will be filed, is due on or before **December 30, 2021**. If additional time is necessary, the State may request to extend that due date.

Entered under the authority of Chief Judge Allard.

Clerk of the Appellate Courts

A handwritten signature in black ink, appearing to read 'Kaitlin D'Eimon', written over a horizontal line.

Kaitlin D'Eimon, Deputy Clerk

Distribution:

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